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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,708	10/18/2001	John B. Stoick	2267.629US01	2958
24113	7590	04/20/2005	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/001,708	<b>Applicant(s)</b> STOICK ET AL.	
	<b>Examiner</b> Ghassem Alie	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 6, 11, 13, 15, 16, and 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which is not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Regarding claims 1, 6, 11, 13, 15, 16, and 20, the disclosure fails to teach that the cutter blade is a “non-movable cutter blade.” The cutter blade moves with the tubing cutter device and rotates around tubing. Therefore, the cutter blade is not a “non-movable cutter blade” or a stationary blade.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-13, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hochfeld et al. (2,254,199), hereinafter Hochfeld. Regarding claim 11, Hochfeld teaches a cutter that is capable of snapping onto and circumferentially grasp plastic tubing to facilitate the rotational cutting of the tubing. Hochfeld also teaches a cutter body and a C-shaped grasping portion 42 formed in the body and grasping portion 42 includes an opening 36 and a tube receiving portion. Hochfeld also teaches that opening 36 has a width

generally less than the width of the tube receiving region such that C-shaped grasping portion 42 receives the plastic tubing with snap engagement retains the plastic tubing during the cutting of the tubing. The opening section of the grasping portion has a width less than the tube receiving region of the grasping portion such that plastic tubing needs to be forced onto the opening section in order to be placed within the tube receiving region of the grasping portion. Hochfeld also teaches a non-movable blade 38 secured to the body such that a chordal portion 44 of the blade extends into the grasping portion whereby rotational movement of the engaged cutter around the outer surface of the tubing facilitate cutting. It should be noted that grasping portion 42 has a circular-shaped receiving portion and non-movable blade 38 extends into the grasping portion. A chordal portion 44 of the blade extends into the circular-shaped receiving region of grasping portion 42 in the same manner that a chordal portion of the blade extends into the grasping portion in the instant invention. See Fig. 1 below and Fig. 1 in the instant invention.

Regarding claims 12 and 13, Hockfeld teaches everything noted above including that grasping portion 42 makes substantial surface contact around the circumference of the tubing a distance necessary to forcefully receive the tubing. A tubing with slightly larger diameter than the grasping portion inherently could be snapped into the spaced within the grasping portion. Hockfeld also teaches that the contact around the circumference of the tubing is a distance between 51 to 75 percent of the circumference of the tubing. See Fig. 1 below.

### ***Claim Rejections - 35 USC § 103***

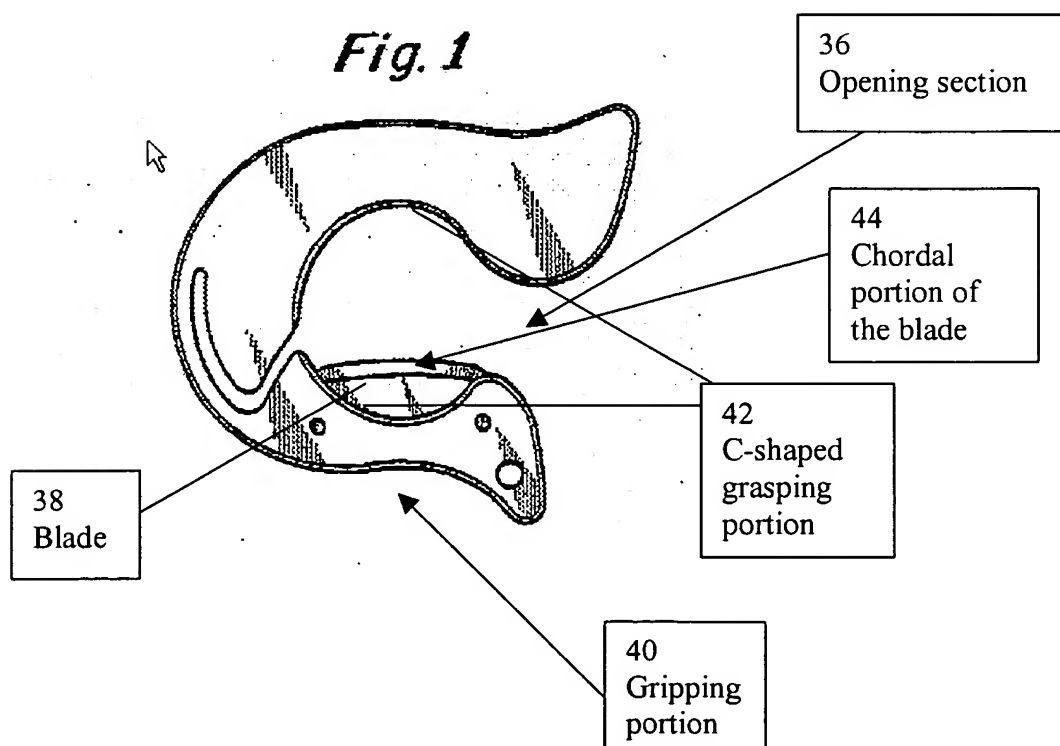
5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

Obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1-4, 6-10, and 15-20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hochfeld in view of Baltuch (2,254,199), or Mancini (Des. 362,168). Regarding claim 1, Hochfeld teaches a cutter that is capable of snapping onto and circumferentially grasp plastic tubing to facilitate the rotational cutting of the tubing. Hochfeld also teaches a cutter body and a C-shaped grasping portion 42 formed in the body and grasping portion 42 includes an opening 36 and a tube receiving portion. Hochfeld also teaches that opening 36 has a width generally less than the width of the tube receiving region such that C-shaped grasping portion 42 receives the plastic tubing with snap engagement retains the plastic tubing during the cutting of the tubing. The opening section of the grasping portion has a width less than the tube receiving region of the grasping portion such that plastic tubing needs to be forced onto the opening section in order to be placed within the tube receiving region of the grasping portion. Hochfeld also teaches a non-movable blade 38 secured to the body such that a chordal portion 44 of the blade extends into the grasping portion whereby rotational movement of the engaged cutter around the outer surface of the tubing facilitate cutting. It should be noted that grasping portion 42 has a circular-shaped receiving portion and non-movable blade 38 extends into the grasping portion. A chordal portion 44 of the blade extends into the circular-shaped receiving region of grasping portion 42 in the same manner that a chordal portion of the blade extends into the grasping portion in the instant invention. See Fig. 1 in Hochfeld and the instant invention. See Fig. 1 below.

Hochfeld does teach that the cutter body has a front piece removably secured to a back piece such that securement of the front piece and back piece form the body and the blade is secured within the front and back pieces. However, the use of a cutter body having a front piece and a back piece and a blade secured within the front and back pieces is well known in the art such as taught by Baltuch or Mancini. Baltuch teaches a cutter body 10 having a front piece 10 and a back piece 11 and a blade 19 secured within the front and back pieces. See Figs. 1-5 and col.2, lines 1-51 in Baltuch. Mancini also teaches a cutter body having a front piece and a back piece and a blade secured within the front and back pieces a cutter body. See Figs. 1-6 in Mancini. It would have been to a person of ordinary skill in the art to form Hockfeld's cutter body from a front piece and a back piece such as taught by Baltuch or Mancini in order to secure the blade within the front and back pieces of the cutter body and protect the user for inadvertent contact with the blade and expand the supporting area of the tubing. In addition, Hockfeld's blade can be secured to the cutter body in an alternative manner as taught by Baltuch, since in both designs the blade is replaceable.



Regarding claims 2-4 and 6, Hockfeld teaches everything noted above including that the inner diameter of C-shaped grasping portion 42 is smaller than the outer diameter of the tubing. A tubing with slightly larger diameter than the grasping portion inherently could be snapped into the spaced within the grasping portion. The rotational movement of the cutter inherently cuts the tubing a distance short of the thickness of the tubing. Hockfeld also teaches that the blade 38 is a single-edged razor blade. See Fig. 1 above.

Regarding claim 7-10, Hockfeld as modified by Baltuch teaches everything noted above including that front piece 11 and back piece 12 are secured to one another with screws 22, 14. Hockfeld as modified by Baltuch also teaches that body 15, 16 is symmetrical along the axis defining the width and thickness of the body. See Figs. 1-5 in Baltuch.

Regarding claim 15, Hockfeld as modified above teaches everything noted above including a gripping portion 40 formed in the body by at least one arcuate depression for human handing of the cutter. See Fig. 1 above in Hockfeld.

Regarding claims 16 and 18-20, Hockfeld as modified above teaches everything noted above including that the cutter blade 38 is positioned to extend into the tube receiving region a distance less than the specified wall thickness of the tubing. The chordal portion of the blade that is the same size as the cutting edge of the blade is extended onto the receiving region of grasping portion 42. Tubing with specified wall thickness, which is less than the extended distance of the blade into the tube receiving region can be inserted into the tube receiving region.

Regarding claim 17, Hockfeld as modified by Baltuch also teaches that the tube cutter includes cooperating protrusion and recess for aligning the body pieces together. Cooperating

protrusions and recesses inherently are located within their interior surfaces of the body pieces 11, and 12. See Figs. 1-5 in Baltuch.

7. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Hochfeld in view of Baltuch or Mancini, as applied to claim 1, and in further view of Janky (5,815,866). Regarding claim 5, Hockfeld as modified above teaches everything noted above except that the cutter is made of high density polyethylene. However, Janky teaches a cutter made of high density polyethylene. See col. 3, lines 61-67 and col. 4, lines 1-5 in Janky. It would have been obvious to a person of ordinary skill in the art to make Hockfeld's cutter body, as modified above, from high density polyethylene material as taught by Janky in order to ensure that the cutter resist moisture, abrasion, and chemical.

***Response to Amendment***

8. Applicant's arguments with respect to claims 1, 11, 13, 16, and 20 have been considered but are moot in view of the new ground(s) of rejection.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Danter et al. (5,381,601), Meacham (4,139,941), Donlon (2,276,268), Kooiman (6,154,963), Steiner et al. (5,325,587), Kay (D458,820), Domenico (Des. 381,886), Perigny (Des. 352,440), Hagler, Jr. (5,765,288), Harbaugh (4,382,330), Errig et al. (2,003,630), Andina (5,653,023), Addis (3,839,788), and Hochfeld (5,123,320) teach a tubing cutter including a cutter body, a blade, a grasping portion, and a gripping portion.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (too-free).

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GA/ga

April 13, 2005

A handwritten signature in black ink, appearing to read 'AS', with a long, sweeping horizontal stroke extending to the right.

Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700